

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.10.2018

CORAM

THE HONOURABLE Mr.JUSTICE R.SURESH KUMAR

W.P.Nos.6228 & 6230 of 1998

The Food Corporation of India
rep. by the Zonal Manager,
No.2, Haddows Road,
Chennai 600 006.
.. Petitioner in both W.Ps.

- vs -

1.G.Ramalingam
2.V.S.LOGANATHAN
3.V.GANESAN
4.M.KRISHNAN
5.S.STEPHEN
6.P.SOWRIRAJAN
7.V.G.GUNASEKARAN
8.R.RAMASAMY
9.N.GOPALASAMY
10.P.KRISHNAMURTHY
11.K.KANNAN
12.R.S.MANI
13.MRS.G.RANI
14.MRS.ANDALAMMAL
15.MRS.PATHIMAL
16.MRS.SARADHA
17.T.LAKSHMI

18.R.MANI
19.N.THAMBIDURAI
20.MRS. KAMALA
(ALL C/O N.GOPALASAMY
NO.25 YMCA COLONY 3RD ST.
3RD ST. TONDIARPET MS 81)

21.THE CENTRAL GOVERNMENT
LABOUR COURT, CHENNAI
.. Respondents in W.P.No.6228/98

1. D.SUBBARAYAN
2.AURMUGAM

3.DHANASEKARAN
4.MOHAN
5.MAHALINGAM
6.KRISHNABABU
7.DURAIKANNU
8.GANAPATHI
9.RAJENDRAN
10.ANANDAN
11.PANNEERSELVAM
12.KRISHNAKUMAR
13.SEKAR
14.DASTHAGIR
15.KRISHNAMURTHY
16.PUNNIYAKOTI
17.E.SEKARAN
18.DANIEL
19.SHANMUGAM
20.MOHANRAJ
21.MUTHUKRISHNAN
22.JAYAPAL
23.SANKAR
24.SELVARAJ
25.EASWARAN
26.RAMAMURTHY
27.ELLAPPAN
28.JESUDOSS
29.SHANMUGAM
30.RATHINAM
31.ABDUL SUBAN
32.KUGAN
33.MUNUSAMY
34.AHAMED
35.J.VINCENT
36.PERUMAL
37.V.KRISHNAN
38.KALIAMMAL
39.INDIRANI
40.MUNIYAMMAL
41.KAVERI
42.THAYARAMMAL
43.NAGU
44.EGAVALLI
45.SARADAMBAL
46.MANORANJUTHAM
47.ROSI
48.ALAMELU
49.MUTHAMMAL
(ALLC/O N.GOPALASAMY NO.25 YMCA COLONY
3RD STREET T TONDIARPET CHENNAI 81)

50.CENTRAL GOVT.LABOUR COURT

CHENNAI

... Respondents in W.P.No.6230/98

Prayer in W.P.No.6228/98: Writ petition is filed under Article 226 of the Constitution of India seeking to issue a writ of Certiorari calling for the records of the Central Government Labour Court, Chennai dated 03.02.1997 passed in C.P.No.82/85 and to quash the same.

Prayer in W.P.No.6230/98: Writ petition is filed under Article 226 of the Constitution of India seeking to issue a writ of Certiorari calling for the records of the Central Government Labour Court, Chennai dated 03.02.1997 and passed in C.P.No.88/85 and to quash the same.

For Petitioner
in both W.Ps. : Mr.S.Vijayakumar

For Respondents
in both W.Ps. : Mr.K.M.Ramesh
for Mr.R.Krishnan

COMMON ORDER

These writ petitions have been filed seeking a Writ of Certiorari calling for the records of the Central Government Labour Court, Chennai, dated 03.02.1997, passed in C.P.Nos.82 & 88/85 and to quash the same.

2.The short facts which are required to be noticed for the disposal of these writ petitions are as follows :

The private respondents are the employees of the Food Corporation of India. According to the petitioner Food Corporation of India, all these private respondents were casual employees and they had been pressed into service at Port, where the handling of food grain jobs were undertaken by these employees. When the dispute arose with regard to the fixation of wage and payment of wage for these employees, the employees had approached the respondent Labour Court by filing C.P.Nos.82 and 88 of 1985 seeking to claim and compute all the monetary benefits payable to the respondent employees under Section 33-c(2) read with Section 33-c(5) of the Industrial dispute Act, 1947 [hereinafter referred as the 'Act'].

(ii) Resisting the said petitions, the petitioner Food Corporation of India filed a counter stating that, these employees were only temporary or casual employees and as per the wage settlement arrived between the employees and the employer Food Corporation of India dated 15.06.1979 under Section 12(3) of the Act, they are entitled only for the following benefits namely (i) Weekly Off with wage, (ii) Attendance allowance for days and not provided for with work and for days the Port is closed for normal operations, (iii) Provident Fund benefits when eligible.

(iii) It is the definite case on the part of the petitioners that, these wages, as per the wage settlement had already been settled or paid to these employees and that they are not entitled for any other due.

(iv) However, the employees have claimed wage due under various heads, which are projected at paragraph 12 of the claim petition which reads thus:

"In C.P.No.82 of 1985:

The following amounts are due to the petitioner from the respondent:

1. Attendance allowance for the period from
01.01.1969 to 31.12.1984 at the rate of
Rs.22,440/- per petitioner and for

20 petitioner amounting to Rs.4,48,800.00

2.Difference in wages based on Wage Board Recommendations etc., for the period from 01.01.1968 to 31.08.1979 at the rate of Rs.22,660/-per petitioner and for 20 petitioners amounting to Rs.5,53,200.00

3. Benefits of Uniform and Stitching charges for the period from 01.01.1969 to 31.12.1984 or 16 years at the rate of Rs.2,250/-per petitioner and for 20 petitioners amount to Rs. 45,000.00

4.Additional shift arrears for the period from 01.01.1969 to 31.12.1977 at the rate of Rs.48,600/-per petitioner and for 20 petitioners amount to Rs.9,82,000.00

5.Holiday wages for the period from 01.01.1969 to 31.12.84 at the rate of Rs.9,600/- per petition and for 20 petitioners amount to Rs.1,92,000.00

6. Casual leave benefits for the period from 01.01.1969 to 31.12.84 at the rate of Rs.90,600/- per petitioner and for 20 petitioner amounting to Rs.18,12,000.00

7. Earned leave benefits for the period from 01.01.1969 to 31.12.84 at the rate of Rs.9,600/-per petitioner and for 20 petitioners amounting to Rs.1,92,000.00

8.Minimum Guarantee wages for the period from 01.01.1969 to 31.12.84 at the rate of Rs.76,800/- per petitioner and for 20 petitioners amounting to Rs.15,36,000.00

Total : Rs.57,61,000.00

In C.P.No.88 of 1985:

The following amounts are due to the petitioner from the respondent:

1. Attendance allowance for the period from 01.01.1969 to 31.12.1984 at the rate of Rs.22,440/- per petitioner and for 20 petitioner amounting to Rs.10,99,560.00

2.Difference in wages based on Wage Board Recommendations etc., for the

period from 01.01.1968 to 31.08.1979
at the rate of Rs.22,660/-per petitioner
and for 49 petitioners amounting to Rs.11,10,340.00

3. Benefits of Uniform and Stitching charges
for the period from 01.01.1969 to 31.12.1984
or 16 years at the rate of Rs.2,250/-per
petitioner and for 49 petitioners amounting to
Rs. 1,10,250.00

4. Additional shift arrears for the period from
01.01.1969 to 31.12.1977 at the rate of
Rs.48,600/-per petitioner and for 49
petitioners amount to Rs.23,81,400.00

5. Holidays wages for the period from
01.01.1969 to 31.12.84 at the rate
of Rs.9,600/- per petitioner and for
49 petitioners amounting to Rs.4,70,400.00

6. Casual leave benefits for the period
from 01.01.1969 to 31.12.84 at
the rate of Rs.90,600/- per petitioner
and for 49 petitioners amounting to
Rs.44,39,400.00

7. Earned leave benefits for the period
from 01.01.1969 to 31.12.84 at the
rate of Rs.9,600/-per petitioner and
for 49 petitioners amounting to
Rs.4,70,000.00

8. Minimum Guarantee wages for the
period from 01.01.1969 to 31.12.84
at the rate of Rs.76,800/- per petitioner
and for 49 petitioners amounting to
Rs.37,63,200.00

Total : Rs.1,38,44,950.00

"

3. The Labour Court after having considered the petitions as well as the counter, has passed the impugned common order in both the CPs., by order dated 03.02.1997 whereby, the said C.P.Nos.82 & 88 of 1985 were allowed by the Labour Court and each of the petitioner had been directed to be paid a sum of Rs.2,88,050/- & Rs.2,82,550/- respectively, as the computed value of wage due under various heads. Aggrieved over the said order dated 03.02.1997, made by the Labour Court, these two writ petitions have been filed with the aforesaid prayer.

4. I have heard Mr.S.Vijayakumar, learned Standing Counsel appearing for the Food Corporation of India and also Mr.K.M.Ramesh, learned counsel appearing for the respondents/ employees in both writ petitions.

5. Both the learned counsel have made elaborate submissions with regard to the entitlement or non-

entitlement of the employees for the amount due, for which computation had been made by the Labour Court through the impugned order.

6. At one point of time, it was pointed out by the learned counsel appearing for the petitioner that, though the employees were entitled for attendance allowance as per the wage settlement, and the same had been paid to them, nevertheless, these employees, had made a claim for computation of the due, under the heading attendance allowance from 01.01.1969 to 31.12.1984. Like that, in respect of so many other heads including the difference in wages, which was claimed from 01.01.1969 to 31.08.1999 and cash leave benefits, holiday wages and earned leave benefits also from 01.01.1969. However, it was brought to the notice of this Court by the learned counsel appearing for the petitioner that, these employees definitely had not been in employment from 01.01.1969. Some of them had joined in the petitioner Corporation only subsequently, i.e., in the late 1970's and in this regard, he has produced some model orders of appointment in terms of workers some time in 1974 to 1979. Pointing out this, the learned counsel appearing for the petitioner would submit that, when that being the position, based on the claim made by the employees through the claim petition, before the Labour Court claiming wage due under various heads from 01.01.1969, the Labour Court, indiscriminately accepted the said plea without any basis or without any evidence and had allowed the said claim.

7. In this context, Mr.S.Vijayakumar, learned counsel appearing for the respondents/employees would submit that, when all these employees certainly had not been in service from 01.01.1969 and had been in employment from various dates subsequently, there could not be any fixed date in the year 1969. Therefore, the claim made by the respondents that, they are entitled for the these benefits from 1969 onwards will be a fictitious one and therefore, in that count also the employees have been denied certain wage due for which they are not entitled to.

8. By making these submissions, the learned counsel appearing for both sides have admitted that, the claim made by the employees and the stand taken by the petitioner Corporation with reference to the date from which these employees are entitled to certain benefits, atleast the admitted benefits, has not been properly considered.

9. These factors disclose that, the Labour Court before whom, such claims were made by the employee, counter claim was projected by the petitioner Food Corporation of India, had not considered and decided the actual date of entry of service of these employees with the Food Corporation of India and in respect of each of the employees whether the claim made by them for giving wage due under the various heads like attendance allowance, holidays wages and cash leave benefits, earned leave benefits are really due to be payable to them, had not been considered by the Labour Court.

10. When there is a dispute with regard to the claim of wage difference and there is a definite dispute about the date from which, it was claimed by the employees and there had been no evidence in support of such claim from 01.01.1969, the Labour Court, ought to have proceeded to decide the matter by referring it by way of adjudication to decide the claim itself as to the entitlement of the persons for making such a claim. When there are disputed facts, unless it is adjudicated and decided, the Labour Court, ought not to have proceeded to decide the claim/computation petition under Section 33-c(2) or 33-c(5).

11. Therefore, this Court is of the considered view that, the Labour Court erred in allowing the petitions by merely accepting the claim made by these employees as wages due under various heads from 01.01.1969 without ascertaining the claim of each of the employees, by verifying the evidence to be adduced in this regard.

12. Therefore, this Court has no hesitation to hold that, the impugned orders cannot be sustained and therefore, the said exercise of adjudicating the conflicting facts which are very much in dispute before the Labour Court has to be decided and therefore, for the said purpose, the matter can be remitted back to the Labour Court/Industrial Tribunal for de novo hearing, with due opportunities to both sides.

13. In the result, the following orders are passed in these writ petitions:

(i) The impugned orders in both the writ petitions are quashed and the matter is remitted back to the Central Government Industrial Tribunal and Labour Court, Chennai for adjudication.

(ii) While making such adjudication, the Labour Court must adjudicate the issue to be raised in this regard, by both the employer and the employee and in this regard due opportunity shall be given to both sides to adduce both oral and documentary evidence and after having given such an opportunity to both sides, the entire issue shall be decided by the Industrial Tribunal, within a period of six months, from the date of receipt of a copy of this order.

14. It is also made clear that, since time bound order is given to decide the issue, both sides shall be cooperative with the Industrial Tribunal and unnecessary adjournments shall be avoided.

15. It is further made clear that, probably because of paucity of time, the records of the Labour Court would have been destroyed, in that case, on receipt of the copy of the order, the Labour Court shall issue notice to both sides and on receipt of the same, both sides shall file claim petition as well as counter affidavit with documents going to be relied upon by both sides and based on which the case bundle can be re-constructed by the Labour Court and accordingly, it can be proceeded with.

With these directions, these writ petitions are disposed of. No costs.

08.10.2018

Index : Yes/No

Speaking Order/Non-speaking Order

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To,

1.THE CENTRAL GOVERNMENT LABOUR COURT,
CHENNAI.

R. SURESH KUMAR, J.

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W.P.Nos.6228 & 6230 of 1998

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